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9	BEFORE THE		
10	BOARD OF REGISTERED NURSING		
11	DEPARTMENT OF CONSUMER AFFAIRS STATE OF CALIFORNIA		
12		2000 101	
13	In the Matter of the Accusation Against:	Case No. 3009-61	
14	JOHN B. SCUDDER 39750 Intrepid Road	ACCUSATION	
	Temecula, ĈA 92592	ACCOMPTON	
15	Registered Nursing No. RN #484066		
16	Respondent.		
17		•	
18	Complainant alleges:		
19	<u>PARTIES</u>		
20	1. Ruth Ann Terry, M.P.H., R.N. (Complainant) brings this Accusation		
21	solely in her official capacity as the Executive Officer of the Board of Registered Nursing,		
22	Department of Consumer Affairs.		
23	2. On or about August 31, 1992,	the Board of Registered Nursing issued	
24	Registered Nursing License Number RN #484066 to John B. Scudder (Respondent). The		
25	Registered Nursing License expired on April 30, 2008, and has not been renewed.		
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JURISDICTION

- 3. This Accusation is brought before the Board of Registered Nursing (Board), Department of Consumer Affairs, under the authority of the following laws. All section references are to the Business and Professions Code unless otherwise indicated.
 - 4. Section 2761 of the Code states, in pertinent part:

The board may take disciplinary action against a certified or licensed nurse or deny an application for a certificate or license for any of the following:

- (a) Unprofessional conduct, which includes, but is not limited to, the following:
- (1) Incompetence, or gross negligence in carrying out usual certified or licensed nursing functions...
- (f) Conviction of a felony or of any offense substantially related to the qualifications, functions, and duties of a registered nurse, in which event the record of the conviction shall be conclusive evidence thereof.

5. Section 490 of the Code states:

- (a) In addition to any other action that a board is permitted to take against a licensee, a board may suspend or revoke a license on the ground that the licensee has been convicted of a crime, if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the license was issued.
- (b) Notwithstanding any other provision of law, a board may exercise any authority to discipline a licensee for conviction of a crime that is independent of the authority granted under subdivision (a) only if the crime is substantially related to the qualifications, functions, or duties of the business or profession for which the licensee's license was issued.
- (c) A conviction within the meaning of this section means a plea or verdict of guilty or a conviction following a plea of nolo contendere. Any action that a board is permitted to take following the establishment of a conviction may be taken when the time for appeal has elapsed, or the judgment of conviction has been affirmed on appeal, or when an order granting probation is made suspending the imposition of sentence, irrespective of a subsequent order under the provisions of Section 1203.4 of the Penal Code.
- (d) The Legislature hereby finds and declares that the application of this section has been made unclear by the holding in *Petropoulos* v. *Department of Real Estate* (2006) 142 Cal. App.4th 554, and that the holding in that case has placed a significant number of statutes and regulations in question, resulting in potential harm to the consumers of California from licensees who have been convicted of crimes. Therefore, the Legislature finds and declares that this section establishes an independent basis for a board to impose discipline upon a licensee, and that the amendments to this section made by Senate Bill 797 of the 2007 -08 Regular Session do not constitute a change to, but rather are declaratory of, existing law.

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6. Section 493 of the Code states:

Notwithstanding any other provision of law, in a proceeding conducted by a board within the department pursuant to law to deny an application for a license or to suspend or revoke a license or otherwise take disciplinary action against a person who holds a license, upon the ground that the applicant or the licensee has been convicted of a crime substantially related to the qualifications, functions, and duties of the licensee in question, the record of conviction of the crime shall be conclusive evidence of the fact that the conviction occurred, but only of that fact, and the board may inquire into the circumstances surrounding the commission of the crime in order to fix the degree of discipline or to determine if the conviction is substantially related to the qualifications, functions, and duties of the licensee in question.

As used in this section, 'license' includes 'certificate,' 'permit,' 'authority,' and 'registration.'

- 7. Section 118, subdivision (b), of the Code provides that the expiration of a license shall not deprive the Board of jurisdiction to proceed with a disciplinary action during the period within which the license may be renewed, restored, reissued or reinstated.
- 8. California Code of Regulations, title 16, section 1444 states, in pertinent part:

A conviction or act shall be considered to be substantially related to the qualifications, functions or duties of a registered nurse if to a substantial degree it evidences the present or potential unfitness of a registered nurse to practice in a manner consistent with the public health, safety, or welfare.

CAUSE FOR DISCIPLINE

(September 13, 2006 Criminal Conviction-Lewd Act with a Child under age 14 which occurred on or about January 1, 1996 through May 31, 1997)

- 9. Respondent is subject to disciplinary action under sections 2761 and 490 of the Code in that he was convicted of a crime substantially related to the qualifications, functions and duties of a registered nurse. The circumstances are as follows:
- 10. On or about September 13, 2006, in an indictment filed in the San Diego Superior Court, in a case entitled *People v. John Scudder* (case no. CN214970), Respondent pled guilty to count 1 of 10, a violation of Penal Code §288(a), with an enhancement allegation violation of Penal Code § 1203.066(a)(8) (substantial sexual conduct with a victim who is under 14 years of age).

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1	11. In the plea agreement of September 13, 2006, Respondent admitted that he		
2	committed a lewd act upon a child with the intent to appeal to the passions or arouse the victim		
3	or himself, and there was substantial sexual conduct pursuant to Penal Code § 1203.066(a)(8).		
4	12. On November 3, 2006, Respondent was committed to the custody of the		
5	Department of Corrections to be imprisoned for six (6) years. Respondent was ordered to have		
6	no contact with the victims. In addition, he was fined \$2,400.00, ordered to pay restitution to the		
7	victim in the amount of \$6,528.00, ordered to register under the Sex Offender Registration Act,		
8	ordered to undergo HIV testing and DNA sampling, and ordered not to possess firearms or		
9	ammunition.		
10	<u>PRAYER</u>		
11	WHEREFORE, Complainant requests that a hearing be held on the matters herein		
12	alleged, and that following the hearing, the Board of Registered Nursing issue a decision:		
13	1. Revoking or suspending Registered Nursing Number RN #484066, issued		
14	to John B. Scudder.		
15	2. Ordering John B. Scudder to pay the Board of Registered Nursing the		
16	reasonable costs of the investigation and enforcement of this case, pursuant to Business and		
17	Professions Code section 125.3;		
18	3. Taking such other and further action as deemed necessary and proper.		
19			
20	DATED: 9/23/08		
21			
22	Rich On-T		
23	RUTH ANN TERRY, M.P.H., R.N. Executive Officer		
24	Board of Registered Nursing Department of Consumer Affairs		
25	State of California Complainant		
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